

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2011-008VW

2011-008VW  
STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

WINCHESTER GARDENS PRESERVATION, LP

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

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**PETITION FOR WAIVER OF RULE 9I-40.100(2)(a) and (3), F.A.C.**

Winchester Gardens Preservation, LP (“Winchester Gardens”), petitions Florida Housing Finance Corporation (“Florida Housing”) for a waiver of the required annual fixed interest payment for loan financing provided through the HOME Investment Partnerships Program (Disaster Relief) (“HOME Program”). *See* Rule 9I-40.100 (2)(a) and (3), F.A.C. (the “HOME Rule”). In support of the requested Rule waiver, Winchester Gardens states the following:

1. Pursuant to Section 120.542, Fla. Stat., and Rule 28-104.002, F.A.C., Winchester Gardens petitions for a waiver of the HOME Rule which requires an annual fixed rate interest payment to Florida Housing’s servicer.

2. As an alternative, Winchester Gardens requests that its annual interest rate payment be based on Development Cash Flow which is permitted for HOME loans awarded to successful applicants who submitted applications to Florida Housing under its Request for Proposals 2009-06 (“RFP”), p. 11, ¶ 8.

**A. THE PETITIONER**

3. The name, address, telephone and facsimile numbers for Winchester Gardens and its qualified representative is:

Winchester Gardens Preservation, LP  
c/o Winchester Gardens Preservation GP, LLC,  
its managing general partner  
60 Columbus Circle  
New York, NY 10023  
Attention: David Pearson  
Telephone: 212-801-3515  
Facsimile: 212-801-3731  
Email: [DPearson@related.com](mailto:DPearson@related.com)

4. For purposes of this Petition, the address, telephone and facsimile numbers of Petitioner's attorney is:

Brian J. McDonough, Esquire  
STEARNS WEAVER MILLER  
WEISSLER ALHADEFF &  
SITTERSON, P.A.  
150 West Flagler Street, Suite 2200  
Miami, Florida 33130  
Telephone: 305-789-3200  
Facsimile: 305-789-3395  
Email: [bmcdonough@stearnsweaver.com](mailto:bmcdonough@stearnsweaver.com)

**B. THE DEVELOPMENT AND FUNDING**

5. Winchester Gardens Apartments (the "Development"), located in Miami-Dade County, Florida, is a 117-unit rental apartment development. The Development was placed in service as a multifamily rental housing development for extremely low and low income families.

6. The Development was initially financed through (a) equity raised pursuant to tax credits allocated to the Development under Florida Housing's 9% tax credit program; (b) a \$1,450,000 HOME Loan (the "HOME Loan") made by Florida Housing to Winchester Gardens, Ltd. (the "Current Owner"); (c) a \$1,404,000 HOME Supplemental Disaster Relief Program

Loan (“County Loan”) made by Miami-Dade County to the Current Owner; and (d) a first mortgage loan from NationsBank of Florida, N.A., as assigned to Citibank, N.A., in the original principal amount of \$3,035,000.

7. Under Rules then in effect, interest on the HOME Loan accrues at 2.7% per annum, and annual interest payments must be made to Florida Housing’s servicer.<sup>1</sup> A copy of the Promissory Note for the HOME Loan is attached as Exhibit A.

8. Based, in part, upon the age of the Development, substantial rehabilitation is required to update and upgrade the apartment units and facilities.

9. Winchester Gardens has contracted to purchase the Development from the Current Owner, and, after closing on this acquisition, Winchester Gardens will substantially rehabilitate the units and Development facilities.

10. Funding for the acquisition and substantial rehabilitation of the Development will be comprised of (a) approximately \$3,334,417 in equity raised through the anticipated syndication of tax credits allocated to Winchester Gardens and the Development by Florida Housing; (b) approximately \$6,500,000 in first mortgage tax exempt bond financing funding through the New Issue Bond Program (“NIBP”), which will be credit enhanced by Fannie Mae; (c) the assumption by Winchester Gardens of the current \$1,450,000 HOME Loan; and the assumption by Winchester Gardens of the current \$1,330,000 County Loan.

11. The annual interest rate for new HOME Loans that are funded pursuant to RFP 2009-06 will be 1.0% simple interest per annum. *See* RFP, p. 11, ¶ 8. Moreover, “[p]ayment on the [new] HOME loan shall be based upon the Development Cash Flow, as determined pursuant to the Financial Reporting Form SR-1, ...”*Id.*

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<sup>1</sup>*See* Rule 9I-ER93-10, for HOME Investment Partnership Program (Disaster Relief).

12. Winchester Gardens has been in communications with Oak Grove Capital (“Oak Grove”), the underwriter for Fannie Mae Bond Credit Enhancement required in connection with the issuance of bonds under the NIBP.

13. Oak Grove has advised that, without modification of the terms of the existing HOME Loan (the “Sub-Debt”) so that debt service payments on the HOME Loan are made subject to available cash flow (“Soft Pay”), the Development will be unable to support the amount of senior debt needed to acquire and adequately rehabilitate the Development in a financially feasible manner. A copy of Oak Grove’s April 19, 2011 correspondence is attached hereto as Exhibit B.

14. As a result, in order to meet Oak Grove’s underwriting requirements, a waiver of the HOME Rule is required to allow for an annual interest payment at the fixed rate of 3% the payment of which will be dependent upon available cash flow.

15. The requested waiver will, in essence, provide Winchester Gardens with similar terms and conditions for annual interest payments on the assumed HOME Loan as those terms and conditions now available to developers receiving new HOME Loans under RFP 2009-06, i.e., debt service payments based upon available Development Cash Flow. By permitting Winchester Gardens to make its loan payments in this manner, it will enable Winchester Gardens to leverage federal resources created by the NIBP with the HOME Loan, a state resource funded from a federal program already committed to this Development. *See* RFP 2009-06, at p. 11, ¶ 8.

16. The requested Rule waiver will not adversely impact the Development. A denial of this Petition, however, could (a) prohibit Winchester Gardens from obtaining sufficient funding to acquire and substantially rehabilitate the Development; (b) result in significant economic hardship to the Development which is in dire need of substantial rehabilitation; (c)

deprive Miami-Dade County of essential, safe and rehabilitated affordable housing units; and (d) violate principles of fairness. § 120.542(2), Fla. Stat. (2009).

17. More importantly, without the requested waiver, the Development may no longer be able to provide safe low-income housing units to a market in desperate need of quality affordable housing.

18. The requested Rule waiver is permanent in nature.

**C. THE RULE FROM WHICH RELIEF IS REQUESTED AND THE STATUTE IMPLEMENTING THE RULE**

19. Winchester Gardens realleges and incorporates Paragraphs 1 through 18 as though fully set forth herein.

20. Winchester Gardens requests a waiver of the HOME Rule as more specifically discussed herein.

21. The Rule that was applicable at the time the HOME Loan was made does not (generally) limit the obligation of the borrower to make annual interest payments on available Development Cash Flow. Instead, interest payments are based on a fixed annual interest rate without reference to available cash flow unless any portion of the Home Loan caused the Development's loan to value ratio to exceed one hundred percent (100%.) As the Promissory Note does not provide for the contingent payment of interest (contingent on cash flow) it is assumed that such exception to the mandatory interest payment described in the Home Rule did not apply. Moreover, although "[t]he loans shall be non-amortizing and repayment of principal shall be deferred until maturity[,] **[i]nterest payments on the mortgage shall be due to the servicer on the thirtieth day of June, of each year.**" Rule 9I-40.100(3), F.A.C. (emphasis added).

22. In contrast to the HOME Rule, the provisions of RFP 2009-06 specifically provide that “[p]ayment on the HOME loan **shall be** based upon the Development Cash Flow, as determined pursuant to the Financial Reporting Form SR-1, or shall be due annually as determined by Florida Housing’s Board of Directors.” *Id.*

23. The HOME Rule for which the waiver is requested are implementing, among other sections of the Florida Housing Finance Corporation Act (the “Act”),<sup>2</sup> the statute that created the HOME Program. § 420.5089, Fla. Stat. The HOME Program recognizes the need to establish a qualified public depository for loans to eligible housing providers through a process that “must incorporate and provide incentives for welfare-to-work transitioning in coordination with applicable state and federal programs.” *Id.* Accordingly, the HOME Rules are implementing Florida Housing’s statutory authorization to establish the requirements, rules, and procedures for the HOME Program.

24. Moreover, the HOME Program comports with legislative findings concerning the need to provide alternative funding sources to remedy the serious shortage of decent, safe, and sanitary housing to individuals and families with low and moderate income. § 420.502, Fla. Stat.

**D. JUSTIFICATION FOR WINCHESTER GARDENS’ REQUESTED WAIVER**

25. Winchester Gardens realleges and incorporates Paragraphs 1 through 24 as though fully set forth herein.

26. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., Florida Housing has the authority to grant waivers to its rule requirements when strict application of these rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when the person who is subject to the rule demonstrates that

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<sup>2</sup> The Act is set forth in Sections 420.501 through 420.516 of the Florida Statutes (2009).

the application of the rule would (1) create a substantial hardship or violate principles of fairness,<sup>3</sup> and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), Fla. Stat. (2009).

27. In this instance, Winchester Gardens meets the standards for Rule waivers.

28. The Development was placed in service almost 15 years ago. Today, the Development requires substantial rehabilitation of not only its 117 units and their buildings, but the facilities available to and used by the Development's residents.

29. The ability to substantially rehabilitate the Development is dependent upon a significant infusion of funds.

30. Winchester Gardens has a contract to purchase the Development and has an acquisition and rehabilitation funding package, described in Paragraph 10 above, to accomplish this goal.

31. However, without a waiver of the HOME Rule's required annual interest payments, or the ability to pay debt service obligations on the HOME Loan from Development Cash Flow, as now permitted for new HOME Loans to be funded pursuant to RFP 2009.06, it is unlikely that Winchester Gardens can proceed with the acquisition and rehabilitation of the Development.

32. In fact, Oak Grove, as the underwriter for the NIBP program, specifically recognized that:

If the Sub-Debt [HOME Loan] can be modified so that debt service payments are only made subject to available cash flow

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<sup>3</sup> "Substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. "Principles of Fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the Rule Section 120.542(2), Florida Statutes (2009).

(“Soft Pay”), Winchester Gardens will ultimately be able to support more senior debt. In addition, Soft Pay Sub-Debt is preferable to Fannie Mae, but also to the Low Income Housing Tax Credit (“LIHTC”) investors in the market today, and as you are aware, the universe of LIHTC investors currently interested in investing in Bond financed affordable housing communities is limited.

Exhibit B

33. Significantly, absent the requested waiver, it is improbable that any otherwise qualified developer could obtain the necessary financing to acquire and substantially rehabilitate the Development.

34. The requested waiver, therefore, would significantly benefit the residents of the Development by enabling Winchester Gardens, as the new developer, to acquire the Development and to have sufficient funds for the necessary and substantial rehabilitation of the residents’ units and facilities.

**E. CONCLUSION**

35. Controlling statutes and Florida Housing’s Rules are designed to allow the flexibility necessary to provide relief from rule requirements when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results. Waivers should be granted when the applicant subject to the rule demonstrates that strict application would: (a) create a substantial hardship or violate principles of fairness; and (b) the purpose of the underlying statute has been or will be achieved by other means. § 120.542(2), Fla. Stat. (2009).

36. The requested waiver will not adversely impact the Development or Florida Housing, and will ensure that 117 affordable housing units will be substantially rehabilitated and remain available for families and individuals in Miami-Dade County, Florida.



37. However, a denial of the requested waiver would result in a substantial hardship for Winchester Gardens. Winchester Gardens would be unable to obtain sufficient funding to acquire and rehabilitate the Development and consequently would be denied the ability to provide decent, safe, and affordable housing units to a market in desperate need of extremely low and low income housing.

38. Finally, by granting the requested waiver, Florida Housing would recognize the economic realities and principles of fundamental fairness in the preservation of affordable rental housing. In particular, the requested waiver for this Development would allow for the application of rules to the restructuring of the HOME Loan as will be applied to virtually identical HOME loans which are to be funded under RFP 2009-06, and, most importantly, would condition the ability to service debt on available Development Cash Flow. This recognition would allow Winchester Gardens to meet the purpose of the Act in an economical and efficient manner.

39. Should Florida Housing require additional information, Winchester Gardens is available to answer questions and provide all information necessary for consideration of its Petition for Waiver of Rule 9I-40.100(2)(a) and (3).

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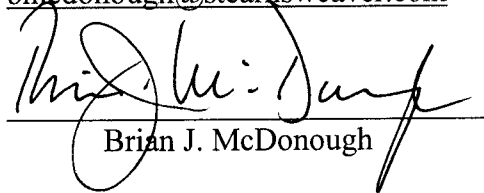
WHEREFORE, Petitioner Winchester Gardens Preservation, LP, respectfully requests that Florida Housing Finance Corporation:

- A. Grant the Petition and all the relief requested therein;
- B. Waive the requirement for annual fixed interest rate payments to Florida Housing's servicer, and instead allow annual 3% interest only payments on the HOME Loan to be made from Development Cash Flow in accordance with RFP 2009-06; and
- C. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER  
ALHADEFF & SITTERSON, P.A.  
150 West Flagler Street, Suite 2200  
Miami, Florida 33130  
Telephone: 305-789-3200  
Facsimile: 305-789-3395  
Email: [bmcdonough@stearnsweaver.com](mailto:bmcdonough@stearnsweaver.com)

By:

  
Brian J. McDonough

**CERTIFICATE OF SERVICE**

The Original Petition is being served by overnight delivery, with a copy served by electronic transmission, for filing with the Corporation Clerk for Florida Housing Finance Corporation, 227 N. Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300, this 18<sup>th</sup> day of May, 2011.

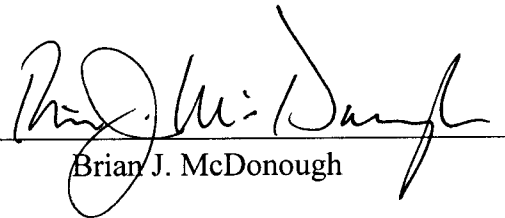
By:   
Brian J. McDonough

Exhibit "A"  
Home Loan Promissory Note

PROMISSORY NOTE

\$1,450,000

Orlando, Florida  
August 14, 1995

FOR VALUE RECEIVED the undersigned, Winchester Gardens, Ltd., a Florida limited partnership, ("Maker"), promises to pay to the order of the FLORIDA HOUSING FINANCE AGENCY, an agency of the State of Florida, together with its successors, assigns or any other holder hereof ("Holder"), at Suite 5000, 227 North Bronough Street, Tallahassee, Florida 32301-1329, or such other place as Holder may from time to time designate in writing, the principal sum of One Million Four Hundred Fifty Thousand and No/100 Dollars (\$1,450,000) or so much as may be advanced from time to time pursuant to the Loan Agreement of even date herewith, plus accrued interest, to be paid in lawful money of the United States of America, as follows:

- 1) This Note shall bear interest computed at the rate of 2.7% per annum (the "Applicable Interest Rate") on the outstanding principal balance.
- 2) The entire unpaid principal amount of the Note, together with accrued but unpaid interest thereon shall be due and payable on July 30, 2015 (the "Maturity Date") unless acceleration is made by Holder pursuant to the terms hereof. Nonamortizing interest only payments computed at the rate of 2.7% per annum on the then existing outstanding principal balance of the Note at the Applicable Interest Rate) shall be payable commencing July 30, 1996. Subsequent payments of interest as aforesaid shall be due on the 30th day of July for each calendar year thereafter until the Maturity Date, at which time all outstanding principal indebtedness together with all accrued and unpaid interest thereon shall be due and payable, as aforesaid.
- 3) This Note may be prepaid in whole or in part at any time, without penalty or premium. Any prepayment hereunder shall be applied first to unpaid costs of collection, servicing fees, and late charges, if any, then to accrued, deferred and unpaid interest and the balance, if any, to the principal balance.
- 4) After maturity or acceleration, this Note shall bear interest at the Default Interest Rate until paid in full.
- 5) All terms hereunder shall be as construed and defined in Chapter 9I-40, Florida Administrative Code.

This Note is secured by a Mortgage and Security Agreement (the "Mortgage") encumbering certain real property located in Dade County, Florida (the "Premises"), and by a Collateral Assignment of Leases, Rents and Contract Rights, all of even date herewith. The

foregoing and all other agreements, instruments and documents delivered in connection therewith and herewith are collectively referred to as the "Loan Documents."

This Note has been executed and delivered in, and is to be governed by and construed under the laws of, the State of Florida, as amended, except as modified by the laws and regulations of the United States of America.

Maker shall have no obligation to pay interest or payments in the nature of interest in excess of the maximum rate of interest allowed to be contracted for by law, as changed from time to time, applicable to this Note (the "Maximum Rate"). Any interest in excess of the Maximum Rate paid by Maker ("excess sum") shall be credited as a payment of principal, or, if Maker so requests in writing, returned to Maker, or, if the indebtedness and other obligations evidenced by this Note have been paid in full, returned to Maker together with interest at the same rate as was paid by Maker during such period. Any excess sum credited to principal shall be credited as of the date paid to Holder. The Maximum Rate varies from time to time and from time to time there may be no specific maximum rate. Holder may, without such action constituting a breach of any obligations to Maker, seek judicial determination of the Maximum Rate of interest, and its obligation to pay or credit any proposed excess sum to Maker.

The "Default Interest Rate" and, in the event no specific maximum rate is applicable, the Maximum Rate shall be eighteen percent (18%) per annum.

Holder shall have the right to declare the total unpaid balance hereof, together with accrued but unpaid interest thereon, to be immediately due and payable in advance of the Maturity Date upon the failure of Maker to pay when due, taking into account applicable grace periods, any payment of principal or interest or other amount due hereunder; or upon the occurrence of an event of default pursuant to any other Loan Documents now or hereafter evidencing, securing or guarantying payment of this Note. Exercise of this right shall be without notice to Maker or to any other person liable for payment hereof, notice of such exercise being hereby expressly waived.

Any payment hereunder not paid when due (at maturity, upon acceleration or otherwise) taking into account applicable grace periods shall bear interest at the Default Interest Rate from the due date until paid.

Provided Holder has not accelerated this Note, Maker shall pay Holder a late charge of five percent (5%) of any required payment which is not received by Holder within 15 days of the due date of said payment. The parties agree that said charge is a fair and

reasonable charge for the late payment and shall not be deemed a penalty.

Time is of the essence hereunder. In the event that this Note is collected by law or through attorneys at law, or under advice therefrom, Maker agrees to pay all costs of collection, including reasonable attorneys' fees, whether or not suit is brought, and whether incurred in connection with collection, trial, appeal, bankruptcy or other creditors' proceedings or otherwise.

Acceptance of partial payments or payments marked "payment in full" or "in satisfaction" or words to similar effect shall not affect the duty of Maker to pay all obligations due hereunder, and shall not affect the right of Holder to pursue all remedies available to it under any Loan Documents.

The remedies of Holder shall be cumulative and concurrent, and may be pursued singularly, successively or together, at the sole discretion of Holder, and may be exercised as often as occasion therefor shall arise. No action or omission of Holder, including specifically any failure to exercise or forbearance in the exercise of any remedy, shall be deemed to be a waiver or release of the same, such waiver or release to be effected only through a written document executed by Holder and then only to the extent specifically recited therein. A waiver or release with reference to any one event shall not be construed as continuing or as constituting a course of dealing, nor shall it be construed as a bar to, or as a waiver or release of, any subsequent remedy as to a subsequent event.

Any notice to be given or to be served upon any party hereto in connection with this Note, whether required or otherwise, may be given in any manner permitted under the Loan Documents.

Neither the Maker nor any of its partners shall have any personal liability for the payment of any portion of the indebtedness evidenced by this Note. In the event of a default by the Maker under this Note, the Holder's sole remedy hereunder shall be limited to exercising its rights under the Loan Documents and the Mortgage Loan Documents, including foreclosure and the exercise of the power of sale or other rights granted thereunder, but shall not include a right to proceed directly against the Maker or its partners, or the right to obtain a deficiency judgment after foreclosure against the Maker or its partners. Notwithstanding the foregoing, nothing herein contained shall be construed as limiting, diminishing or otherwise affecting the rights of Holder to proceed against any person or entity who is or may be obligated to pay or perform the obligations of Maker under any of the Loan Documents.

Whenever the context so requires, the neuter gender includes the feminine and/or masculine, as the case may be, and the singular

number includes the plural, and the plural number includes the singular.

Maker and any other person liable for the payment hereof respectively, hereby (a) expressly waive any valuation and appraisal, presentment, demand for payment, notice of dishonor, protest, notice of nonpayment or protest, all other forms of notice whatsoever, and diligence in collection; (b) consent that Holder may, from time to time and without notice to any of them or demand, (i) extend, rearrange, renew or postpone any or all payments, (ii) release, exchange, add to or substitute all or any part of the collateral for this Note, and/or (iii) release Maker (or any co-maker) or any other person liable for payment hereof, without in any way modifying, altering, releasing, affecting or limiting their respective liability or the lien of any security instrument; and (c) agree that Holder, in order to enforce payment of this Note against any of them, shall not be required first to institute any suit or to exhaust any of its remedies against Maker (or any co-maker) or against any other person liable for payment hereof or to attempt to realize on any collateral for this Note.

BY EXECUTING THIS NOTE, MAKER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHTS OR THE RIGHTS OF ITS HEIRS, ASSIGNS, SUCCESSORS OR PERSONAL REPRESENTATIVES TO A TRIAL BY JURY, IF ANY, IN ANY ACTION, PROCEEDING OR SUIT, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE, AND WHETHER ASSERTED BY WAY OF COMPLAINT, ANSWER, CROSSCLAIM, COUNTERCLAIM, AFFIRMATIVE DEFENSE OR OTHERWISE, BASED ON, ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS NOTE OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT TO BE EXECUTED IN CONNECTION HERewith OR WITH THE INDEBTEDNESS OR THE RENEWAL, MODIFICATION OR EXTENSION OF ANY OF THE FOREGOING OR ANY FUTURE ADVANCE THEREUNDER. THIS PROVISION IS A MATERIAL INDUCEMENT FOR AGENCY'S EXTENDING CREDIT TO A BORROWER AND NO WAIVER OR LIMITATION OF AGENCY'S RIGHTS HEREUNDER SHALL BE EFFECTIVE UNLESS IN WRITING AND MANUALLY SIGNED ON AGENCY'S BEHALF.

Maker acknowledges that the above paragraph has been expressly bargained for by Agency as part of the transaction with Borrower and that, but for Maker's agreement thereto, Agency would not have extended the Indebtedness for the terms and at the interest rates provided.

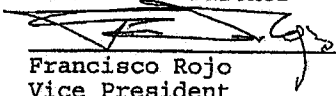


IN WITNESS WHEREOF, Maker has executed this Note on the day and year first above written.

WINCHESTER GARDENS, LTD.,  
a Florida limited partnership

By: RELATED/WINCHESTER, LTD.,  
a Florida limited partnership,  
as its General Partner

By: Related Homestead, Inc.,  
a Florida corporation,  
as General Partner

  
\_\_\_\_\_  
Francisco Rojo  
Vice President

By: Jubilee Group, Inc.,  
a Florida corporation,  
as General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
As Its: \_\_\_\_\_

IN WITNESS WHEREOF, Maker has executed this Note on the day and year first above written.

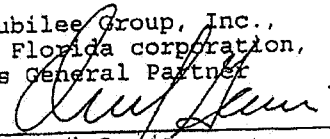
WINCHESTER GARDENS, LTD.,  
a Florida limited partnership

By: RELATED/WINCHESTER, LTD.,  
a Florida limited partnership,  
as its General Partner

By: Related Homestead, Inc.,  
a Florida corporation,  
as General Partner

\_\_\_\_\_  
Francisco Rojo  
Vice President

By: Jubilee Group, Inc.,  
a Florida corporation,  
as General Partner

  
\_\_\_\_\_  
Pedro J. Garcia  
President

**Exhibit "B"**  
**Oak Grove Correspondence**

#876225 v3



April 19, 2011

Mr. David Pearson  
Related Affordable  
60 Columbus Circle  
New York, NY 10023

Re: Winchester Gardens Apartments – Miami, FL

Dear David:

As you know, we are currently underwriting Winchester Gardens Apartments in response to your request for Fannie Mae Credit Enhancement ("Credit Enhancement") in connection with the allocation of bonds ("Bonds") that you are applying for as part of the Florida Housing Finance Corp.'s ("FHFC") participation in the New Issue Bond Program ("NIBP").

Fannie Mae's underwriting standards require a minimum combined debt service coverage ratio ("DSCR") of 1.05:1 and a maximum combined Loan to Value ("LTV") ratio of 95% for any Credit Enhancement that has subordinate debt ("Sub-Debt") that requires mandatory payments of debt service ("Hard Pay"). In addition, any Hard Pay Sub-Debt must be fully amortizing or must balloon at a minimum 6 months after the maturity of the senior debt.

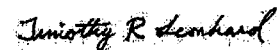
The 1.05:1 minimum DSCR will ultimately limit the amount of the Credit Enhancement that Fannie Mae will be able to provide.

If the Sub-Debt can be modified so that debt service payments are only made subject to available cash flow ("Soft Pay"), Winchester Gardens will ultimately be able to support more senior debt. In addition, Soft Pay Sub-Debt is preferable to Fannie Mae, but also to the Low Income Housing Tax Credit ("LIHTC") investors in the market today, and as you are aware, the universe of LIHTC investors currently interested in investing in Bond financed affordable housing communities is limited.

With Soft Pay Sub-Debt, there are no minimum DSCR, or maximum LTV constraints, however, any payments of debt service on Soft Pay Sub-Debt may not, in aggregate, exceed 75% of surplus cash flow after the payment of operating expenses, Replacement Reserves contribution, contributions to escrows (i.e. taxes, insurance, etc.) and debt service on senior debt.

Please let me know if you have any questions.

Sincerely,

  
Timothy R. Leonhard  
Executive Vice President